SUPREME COURT, U.S.
FILED
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No. 92-1255

IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

RICHARD L. ARKIN,
Petitioner

v.

GAITHERSBURG PUBLISHING COMPANY, INC. and
STEPHEN H. FISHER,
Respondents

On Petition for Writ of Certiorari to the Court of Special Appeals of Maryland

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BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the decision of the Court of Special Appeals of Maryland conflicts with a prior decision of that court and with Maryland law generally governing the trial court's threshold determination of whether, as a matter of law, a statement is defamatory or creates an actionable false impression?

LIST OF PARTIES

Respondents adopt the List of Parties set out by the Petitioner.*

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* Respondent Gaithersburg Publishing Company, Inc. is a substantially owned subsidiary of The Gaithersburg Gazette, Inc., which is in turn a wholly owned subsidiary of The Washington Post Company.

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On Petition for Writ of Certiorari to the Court of Special Appeals of Maryland

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BRIEF IN OPPOSITION

JURISDICTION

Petitioner seeks review of the judgment of a state court, invoking jurisdiction pursuant to 28 U.S.C. § 1257. However, the Petition for Writ of Certiorari (the "Petition") presents no federal question giving this Court jurisdiction. Petitioner merely challenges the application by the Court of Special Appeals of Maryland (the "Court of Special Appeals") of concededly applicable state law principles governing the trial judge's role in determining whether particular statements are capable of bearing the defamatory meaning or false impression alleged.[1]

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[1] In setting out the question presented, Petitioner makes passing reference to the First Amendment, but clearly *not* as the basis for review. As stated, the question presented is whether certain statements defamed him or invaded his privacy in "contravention" of the First Amendment. This effort to create a First Amendment

STATEMENT OF RULES

In addition to certain of the provisions cited by Petitioner, Md. Rule 8-114(a) and (b) is pertinent to this Court's review. The full text of that Rule is set out in Respondents' Appendix at 1a (hereafter "R.A. ——").

STATEMENT OF THE CASE

Petitioner's Statement of the Case evidences a fundamental misapprehension of the actions of the courts below and of the principles and cases upon which they were based. Moreover, the Petitioner has failed to fairly and clearly articulate the separate and independent bases underlying those actions.

In 1989, Petitioner Richard L. Arkin ("Arkin") unsuccessfully sought election to the Rockville, Maryland City Council. Less than one month after his defeat in the November general election, Arkin filed a series of complaints with the Rockville Board of Elections Supervisors, contending that a rival political organization, the Alliance of Rockville Citizens, had committed certain violations of law in connection with the election.

Shortly after Arkin's complaints were filed, Arkin's own campaign for public office, his political organization and his election-related complaints were the subject of a political commentary (the "Article") authored by Respondent Stephen H. Fisher ("Fisher"). The Article, entitled "I Am Confidant [sic] Arkin's Complaints Portend Little Risk to ARC," appeared in the December 27, 1989 edition of the *Rockville Gazette*, under a large print

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issue is unavailing. The First Amendment does not prohibit defamation or invasion of privacy. The existence and contours of these torts, as long as not applied in an overbroad manner to punish speech protected by the First Amendment, are strictly matters of state law. *See, e.g., Masson v. New Yorker Magazine*, —— U.S. ——, 111 S.Ct. 2419, 2436 (1991) ("whether a statement is defamatory is a question of [state] law"); *Gertz v. Welch*, 418 U.S. 323, 341 (1974).

banner titled "OPINION." The *Rockville Gazette* is published by Respondent Gaithersburg Publishing Company, Inc. ("Gaithersburg Publishing").

On December 26, 1990, Arkin filed a twelve-count complaint against Fisher and Gaithersburg Publishing in the Circuit Court for Montgomery County, Maryland. The complaint alleged six counts of defamation arising from statements in the Article and six corresponding counts claiming that the same statements constituted invasion of privacy by placing Arkin in a false light.[2]

Respondents filed a motion to dismiss the complaint for its failure, as a matter of law, to state any claim upon which relief could be granted. Contrary to Arkin's claims in the Petition, the motion was founded upon two independent grounds.

Respondents argued that Arkin's claims for defamation and invasion of privacy, as pleaded, did not satisfy the elements of these state law torts. Respondents also contended, as a separate and independent basis for their motion, that the statements in question constituted rhetorical hyperbole shielded from challenge by the First Amendment to the United States Constitution.

On July 8, 1991, the circuit court dismissed the complaint for failure to state a claim upon which relief could be granted. The circuit court thereafter denied Arkin's motion to alter or amend the judgment, and Arkin noted a timely appeal to the Court of Special Appeals.[3]

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[2] Because Arkin only provided portions of the complaint in his Appendix, Respondents have reproduced the complaint in its entirety. (R.A. 2a-17a).

[3] Prior to the dismissal by the circuit court, Arkin voluntarily dismissed Counts IX through XII of the complaint, containing two claims for defamation and two corresponding claims for invasion of privacy. Thereafter, Arkin did not appeal the judgment of the circuit court as to Counts VII and VIII, leaving only Counts I through VI for review by the Court of Special Appeals.

On June 16, 1992, the Court of Special Appeals affirmed the judgment of the circuit court in an unpublished, *per curiam* decision. The Court of Special Appeals affirmed the judgment on *both* of the grounds raised by Respondents in the circuit court. Relying upon Maryland law granting the court the right to determine, as a threshold matter, whether statements are reasonably capable of the defamatory meaning alleged, and reciting Maryland's definition of a defamatory statement and Maryland's pleading requirements pertinent to defamation claims, the court held that, as a matter of state law, none of the statements was reasonably capable of conveying the defamatory meaning alleged. (See the Opinion of the Court of Special Appeals, reprinted in Petitioner's Appendix, at 1A-29A. Hereafter, citation to materials in Petitioner's Appendix shall be "P.A. ——.")

Independent of this state law basis, the Court of Special Appeals also held as a matter of law that each of the statements in question constituted rhetorical hyperbole. Thus, under the First Amendment, they could not serve as the basis for Arkin's defamation claims. (P.A. 23A)

The Court of Special Appeals then disposed of each of Arkin's claims for invasion of privacy. As stated by the Court of Special Appeals, in Maryland, invasion of privacy and defamation claims "are closely related, and the same considerations and legal standards govern both." (P.A. 23A) Accordingly, Arkin's claims of invasion of privacy failed to state a claim for relief as a result of the same flaws underlying his defamation claims. (P.A. 21A-25A)

Arkin then filed a Petition for Writ of Certiorari with the Court of Appeals of Maryland, the State's highest court. On October 23, 1992, the Court of Appeals of Maryland denied that petition, stating that review by certiorari was neither desirable nor in the public interest. (P.A. 37A)

REASONS FOR DENYING THE WRIT

I. THE PETITION DOES NOT RAISE ANY SUBSTANTIAL FEDERAL QUESTION NOR DOES IT MEET ANY OF THE OTHER CRITERIA JUSTIFYING THIS COURT'S REVIEW.

Arkin's Petition evidences a fundamental misapprehension of the bases upon which this Court will grant a Writ of Certiorari. Arkin cites two grounds in support of his Petition. First, Arkin claims that the decision of the Court of Special Appeals conflicts with that reached in *Embrey v. Holly*, 48 Md. App. 571, 429 A.2d 251 (1981), *aff'd in part, rev'd in part*, 293 Md. 128, 442 A.2d 966 (1982), a prior decision of the same court. (P.A. 13A) Second, citing *Batson v. Shiflett*, 325 Md. 684, 602 A.2d 1191 (1992), Arkin claims that the decision conflicts with a "customary requirement" of Maryland law. (P.A. 16A) Each of these cases, so far as is relevant here, deals with the state procedural issue of the court's authority in determining whether statements are reasonably capable of conveying the defamatory meaning alleged.

Thus, as a threshold matter, nowhere in Arkin's petition has he identified any conflict between the decision of the Court of Special Appeals and a decision of another state court of last resort or a decision of this Court. Moreover, Arkin has not articulated any unresolved question of federal law requiring resolution by this Court. Sup. Ct. R. 10, Fed. Civ. Jud. and Proc. (1991). Arkin simply contends that a conflict exists between two decisions of the Court of Special Appeals and between the decision here at issue and an alleged customary requirement of Maryland law. Intrastate conflicts or questions of state law are not properly reviewable by this Court. *Davis v. United States*, 417 U.S. 333, 340 (1974).

Further, Arkin has not identified any special or important consideration justifying review in this case.

Arkin does not claim any controversy as to the existence of the legal principles upon which the Court of Special Appeals relied. Arkin does not dispute the constitutionality of Maryland's defamation and invasion of privacy law, nor does he challenge the constitutional principles relied upon by the court in its discussion of the doctrine of rhetorical hyperbole. Nor, indeed, does Arkin assert that, as a matter of law, the alleged statements were defamatory or created a false impression. Rather, Arkin merely contends that, under Maryland law, the issue of defamatory content and false impression should have been submitted to the jury. According to Arkin, the Maryland courts misapplied the Maryland procedural law governing this issue to the facts in this case. This Court's review, however, "is discretionary and depends on numerous factors *other* than the perceived correctness of the judgment" below. *Ross v. Moffitt*, 417 U.S. 600, 617 (1974); *Mobil Oil Corp. v. FPC*, 417 U.S. 283, 310 (1974) ("this court will intervene only in what ought to be the rare instance where the standard appears to have been misapprehended or grossly misapplied.") Accordingly, because Arkin has not cited any such factors, the Petition is utterly devoid of reviewable substance.[4]

The most serious flaw underlying Arkin's Petition, however, is that each of the reasons presented as justifying review concerns a matter purely of state law. Arkin cites two decisions in support of his contention that the Court of Special Appeals erred in ruling upon his allegations as a matter of law. Those decisions are *Embrey v. Holly*, 48 Md. App. 571, 429 A.2d 251 (1981) *aff'd in part, rev'd in part*, 293 Md. 128, 422 A.2d 966

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[4] Arkin fails to point out that the unreported, *per curiam* decision of the Court of Special Appeals "is neither precedent within the rule of stare decisis nor persuasive authority," and may not be cited for any purpose in unrelated cases. Md. Rule 8-114(a) and (b). Thus, the decision of the Court of Special Appeals does not establish *any* substantial or important legal principle; its impact is limited solely to the parties involved.

(1982); and *Batson v. Shiflett*, 325 Md. 684, 602 A.2d 1191 (1992). Both of these cases, however, make clear that, as stated in *Batson*, "the threshold question of whether a publication is defamatory. . . . is for the court upon reviewing the statement as a whole. . . ." *Batson*, 325 Md. at 723; 602 A.2d at 1210; *see also Embrey*, 48 Md. App. at 581, 429 A.2d at 259. Both cases also make clear that this standard, and its application, is strictly a matter of state law. No federal statutory or constitutional considerations require or oppose this state rule of procedure. Thus, because no federal question is raised, review by this Court is not warranted.

II. THE DECISION OF THE COURT OF SPECIAL APPEALS IS BASED UPON ADEQUATE AND INDEPENDENT STATE GROUNDS.

The Petition fails to explain that the decision of the Court of Special Appeals was based on two separate, independent and adequate legal grounds. Arkin focuses his review upon the holding by both the circuit court and the Court of Special Appeals that the challenged statements constituted rhetorical hyperbole shielded by the First Amendment. Arkin ignores the entirely separate and independent holding of the Court of Special Appeals that, as alleged, Arkin's claims did not satisfy the elements and pleading requirements of the torts of defamation and invasion of privacy as defined by state law.[5] It has long been held by this Court:

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[5] As previously stated, defamation and false light invasion of privacy actions are governed solely by state law as long as these torts are not applied so broadly as to infringe upon speech protected by the First Amendment. *Masson v. New Yorker Magazine*, —— U.S. ——, 111 S.Ct. 2419, 2436 (1991); *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990); *Gertz v. Welch*, 418 U.S. 323, 347 (1973); *New York Times Co. v. Sullivan*, 376 U.S. 254, 282 (1964). These torts exist to further a state's legitimate interest in protecting its citizens from harm caused by defamatory statements. *Gertz*, 418 U.S. at 341. In contrast, the doctrine of rhetorical

> "Where the judgment of a state court rests upon two grounds, one of which is federal and the other nonfederal in character, [this Court's] jurisdiction fails if the nonfederal ground is independent of the federal ground and adequate to support the judgment."
>
> * * * *
>
> "The jurisdictional concern is that we not render an advisory opinion, and if the same judgment will be rendered by the state court after we corrected its views of federal laws, our review could amount to nothing more than an advisory opinion."

Michigan v. Long, 463 U.S. 1032, 1038 n.4, 1042 (1983), (quoting *Fox Film Corp. v. Muller*, 296 U.S. 207, 210 (1935) and *Herb v. Pitcairn*, 324 U.S. 117, 126 (1945)); *see also*, *Colorado v. Nunez*, 465 U.S. 324, 327 (1984); *Zacchini v. Scripps-Howard Broadcasting Co.*, 433 U.S. 562, 568 (1977). There can be no doubt that the decision of the Court of Special Appeals is based upon an independent and adequate state ground, rendering review inappropriate.

As set forth by the Court of Special Appeals, to allege a claim for defamation in Maryland, a person must plead, *inter alia*: (1) an allegedly defamatory statement that exposes the plaintiff to public scorn, hatred or ridicule; (2) falsity; (3) the requisite degree of fault; and (4) injury caused by the statement. (P.A. 6A) If the statement is defamatory on its face—that is, if the words themselves directly state the defamatory allegation—it is actionable *per se*, without further pleading. If, on the other hand, its defamatory meaning depends on facts or matters outside the statement (defamation *per quod*), those facts or matters, together with the reasonable un-

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hyperbole protects certain forms of speech from being actionable. Thus, provided it is not claimed that state defamation law infringes upon the guarantees of the First Amendment—and Arkin makes no such claim—the separate tests applied by the Court of Special Appeals serve different purposes, operate independently of each other, and are free from entanglement.

derstanding of third parties, must be specifically alleged. (P.A. 6A, 14A)

The Court of Special Appeals found that Counts I, III and V of Arkin's Complaint warranted dismissal because, in each instance, Arkin's allegations failed to satisfy one or more of the elements required by state law. Thus, the Court of Special Appeals found the dismissal of Arkin's defamation claims justified on the grounds that certain of the challenged statements were not defamatory *per se*, and that Arkin failed, under Maryland pleading requirements, to plead sufficient extrinsic facts to support claims for defamation *per quod*. Further, the Court of Special Appeals held that certain of the statements at issue, even if construed as assertions of fact, were non-actionable because true. (P.A. 11A-21A)

Addressing Arkin's false light invasion of privacy claims, the Court of Special Appeals held that, under Maryland law, dismissal of these claims was also proper. It cited several cases for the proposition that, in Maryland, defamation and false light invasion of privacy actions "are closely related and the same considerations and legal standards govern both." (P.A. 23A, citing, *inter alia*, *Phillips v. Washington Magazine, Inc.*, 58 Md. App. 30, 36 n.1, 472 A.2d 98, *cert. denied*, 300 Md. 89, 475 A.2d 1201 (1984)) Consequently, because Arkin attached the same meanings to the challenged statements in his false light counts as he did in the defamation counts, the Court of Special Appeals held that the false light counts were defective for *each* of the reasons set forth in the Court's review of the defamation claims. (P.A. 24A-25A)

Thus, as made clear by the opinion of the Court of Special Appeals, application of the pleading and substantive requirements of Maryland's state defamation and invasion of privacy law and standards served as an independent and adequate ground for the decision below. Accordingly, review of this case is inappropriate.

III. THE DECISION OF THE COURT OF SPECIAL APPEALS WAS CORRECT.

Arkin has failed to cite a single case applying Maryland law to analogous facts in support of his contention that the Court of Special Appeals erred in its application of that law. Instead, Arkin places his principal reliance upon the prior decision of the Court of Special Appeals in *Embrey*, 48 Md. App. 571, 429 A.2d 251 (1981), *aff'd in part, rev'd in part*, 293 Md. 128, 422 A.2d 966 (1982), and in three federal decisions, none of which involves the application of Maryland law. The facts at issue in *Embrey* are not in any way analagous to those here in dispute.[6] Moreover, none of the three federal decisions is in any way apposite to this case. Those cases are *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989); *Tavoulareas v. Piro*, 817 F.2d 762 (D.C. Cir. 1987); and *Afro-American Publishing Co. v. Jaffe*, 336 F.2d 649 (D.C. Cir. 1966). Arkin cites these cases for the alleged proposition that truthful statements are not shielded from claims of defamation and false light invasion of privacy. Contrary to Arkin's contention, these cases merely hold that a publication consisting of *both* true and false statements may be actionable as to the portion found false. *Harte-Hanks*, 491 U.S. at 692; *Tavoulareas*, 817 F.2d at 787-788; *Afro-American*, 336 F.2d at 655. In the present case, however, nothing was false or defamatory as alleged. The Court of Special Appeals separately analyzed each of the statements in question and, relying upon ample Maryland law, prop-

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[6] That case held that the humorously intended statements there at issue were reasonably capable of a defamatory meaning because they were contained in a radio broadcast delivered as straight news, where certain listeners may not have heard those segments indicating the broadcast was intended in jest. This action, on the other hand, involves the print media and an article which appeared under the print banner "Opinion." There was no allegation, as in *Embrey*, that readers did not read the Article as a whole. Further, the Article's intention was not concealed within a straight news format.

erly concluded that the statements or imputations claimed either were not made as alleged or were true.

The Court of Special Appeals' disposition of the rhetorical hyperbole claims was equally well supported. Arkin again fails to cite a single case dealing with analagous facts which reached a decision contrary to that granted by the Court of Special Appeals. Applying well developed principles and a plethora of cases dealing with analogous allegations, the Court of Special Appeals properly concluded that the statements in question, read in the context of the Article as a whole, were marked by precisely the "sort of loose, figurative or hyperbolic language which would negate the impression" that the Article was stating objective facts about Arkin. (P.A. 4A, quoting *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 7 (1990)). Looking at the challenged statements, it is clear that they were "used in the context of a political skirmish [and] . . . could not have been believed to convey objective fact." *Blouin v. Anton*, 139 Vt. 618, 431 A.2d 489, 490-91 (Vt. 1981).

CONCLUSION

For the foregoing reasons, Respondents respectfully request that this Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

APPENDIX

APPENDIX A

RULE 8-114. UNREPORTED OPINIONS

(a) Not Authority.—An unreported opinion of the Court of Appeals or Court of Special Appeals is neither precedent within the rule of stare decisis nor persuasive authority.

(b) Citation.—An unreported opinion of either Court may be cited in either Court for any purpose other than as precedent within the rule of stare decisis or as persuasive authority. In any other court, an unreported opinion of either Court may be cited only (1) when relevant under the doctrine of the law of the case, res judicata, or collateral estoppel, (2) in a criminal action or related proceeding involving the same defendant, or (3) in a disciplinary action involving the same respondent. A party who cites an unreported opinion shall attach a copy of it to the pleading, brief, or paper in which it is cited.

APPENDIX B

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Civil Case No.: 69410 filed 12-26-90

RICHARD L. ARKIN
522 West Deer Park Road
Gaithersburg, Maryland 20877
Plaintiff

v.

GAITHERSBURG PUBLISHING COMPANY, INC. doing business as The Rockville Gazette, 250 Hungerford Drive, Rockville, Maryland 20850

and

STEPHEN H. FISHER
1014 Neal Drive
Rockville, Maryland 20850
Defendants

COMPLAINT and DEMAND FOR JURY TRIAL

[Filed December 26, 1990]

Richard L. Arkin, Plaintiff, by his attorney Michael T. Benson sues Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette, and Stephen H. Fisher, and alleges:

FACTS APPLICABLE TO ALL COUNTS

1. At all times material hereto, The Rockville Gazette, a newspaper published widely in the City of Rockville and its neighboring areas in Montgomery County, MD

did business under the ownership and control of Gaithersburg Publishing Co., Inc., a Maryland corporation, and had an office in Rockville, MD; Stephen H. Fisher was employed by The Rockville Gazette as a columnist or journalist; and Richard L. Arkin had run unsuccessfully for a seat on the Rockville City Council and lived in Gaithersburg, MD.

2. In the December 27, 1989 edition of The Rockville Gazette Stephen H. Fisher authored an article (hereinafter, article in suit) (copy attached hereto and marked as Exhibit 1) read by numerous persons in the Rockville area community, containing a series of false, misleading, and derogatory misstatements of fact, and the Defendants breached their duty to Plaintiff by not contacting him prior to publishing the article in suit to obtain his version of those misstatements.

COUNT I

1. Part of the article in suit states

> "—someone by the name of Richard Arkin, using the return address of an unoccupied house in the West End of Rockville, made two attempts to file a formal complaint against the Alliance of Rockville Citizens for having failed his self-designed litmus test for civic responsibility."
>
> "Mr. Arkin, a year-long resident of Gaithersburg, is believed to have filed and stood for Rockville City Council last month as a slate of one."

2. Defendants knew that the Arkin Rockville residence was heavily damaged by a major fire in late 1988 rendering the Arkin house uninhabitable, that the Arkin family lived in temporary quarters while their home was being rebuilt, that the Arkin family maintained its legal residence for all purposes in Rockville, and failed to so report in the article in suit.

3. The part of the article in suit quoted in this Count makes it appear that the Arkin family moved away from Rockville to Gaithersburg, and that Plaintiff violated Rockville election laws by running for a City of Rockville public office while residing outside of that city.

4. Defendants knew that Plaintiff successfully filed (rather than merely attempted to file) complaints against the Alliance of Rockville Citizens (ARC) because (1) ARC failed to register as a political committee and (2) ARC failed to file required reports with the City of Rockville (not because Plaintiff felt that ARC failed his "self-designed litmus test" for civic responsibility); Defendants knew that those complaints were processed by the Board of Supervisors of Elections, and Defendants knew that the quoted part of the article in suit in this Count was false.

5. As a result of the aforementioned false, misleading, and derogatory statements about him published with reckless disregard of the truth, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Plaintiff, Richard L. Arkin, demands judgment against the Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and the costs of this action.

COUNT II

1. Plaintiff restates, realleges, and incorporates by reference herein paragraph nos. 1 through 5 of Count I.

2. The publication of the aforementioned article quoted in Count I made Plaintiff appear to be a criminal, dishonest, and portrayed him in a false light in the public eye.

3. The aforementioned false light was objectionable to Plaintiff and to others who were acquainted with Plaintiff, under the circumstances of the way the aforementioned part of the article in suit portrayed him.

4. By allowing the article in suit to be published as written, Defendants acted with reckless disregard of the truth by distorting it and acted with malice.

5. As a result of the aforementioned publication portraying Plaintiff in a false light, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Richard L. Arkin, Plaintiff, demands judgment against Defendants, Gaithersburg Publishing Co., Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000) in damages, and in the amount of five million dollars ($5,000,000) in punitive damages, and the costs of this action.

COUNT III

1. Part of the article in suit also states

> "Perhaps Mr. Arkin has forgotten that it is unwise for childish people to play with matches."

2. Defendants knew that the quoted part of the article in suit in this Count in context of discussing his use of a return address of an unoccupied house in the West End of Rockville makes it falsely appear (to those persons who knew of his house being damaged by fire) that fire to the Arkin residence resulted from an act of arson committed by Plaintiff.

3. As a result of the aforementioned false, misleading, and derogatory statements about him published with reckless disregard of the truth, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville

area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Plaintiff, Richard L. Arkin, demands judgment against the Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and the costs of this action.

COUNT IV

1. Plaintiff restates, realleges, and incorporates by reference herein paragraph nos. 1 through 3 of Count III.

2. The publication of the aforementioned article quoted in Count III made Plaintiff appear to be an arsonist criminal, dishonest, and portrayed him in a false light in the public eye.

3. The aforementioned false light was objectionable to Plaintiff and to others who were acquainted with Plaintiff, under the circumstances of the way the aforementioned part of the article in suit portrayed him.

4. By allowing the article in suit to be published as written, Defendants acted with reckless disregard of the truth by distorting it and acted with malice.

5. As a result of the aforementioned publication portraying Plaintiff in a false light, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Richard L. Arkin, Plaintiff, demands judgment against Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars

($5,000,000.00) in punitive damages, and costs of this action.

COUNT V

1. Part of the article in suit states

> "Running mostly under pretense and without the support of a properly constituted election committee, Mr. Arkin, nevertheless won the ringing endorsement of his personally organized citizen group of one known as ASS, or Arkin Seems Sensible."

2. Defendants knew that the quoted part of the article in suit in this Count was false and attributed to Plaintiff a criminal violation of the City of Rockville Election laws because Plaintiff's election committee was properly constituted pursuant to requirements of the City of Rockville Elections Ordinance, and Defendants knew that there was no citizen group known as ASS or Arkin Seems Sensible because from the tone of the article in suit, Defendants wanted to publicly label Plaintiff as an "ass."

3. As a result of the aforementioned false, misleading, and derogatory statements about him published with reckless disregard of the truth, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Plaintiff, Richard L. Arkin, demands judgment against the Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and the costs of this action.

COUNT VI

1. Plaintiff restates, realleges, and incorporates by reference herein paragraph nos. 1 through 3 of Count V.

2. The publication of the aforementioned article quoted in Count V made Plaintiff appear to be a dishonest criminal and a low-life individual, and portrayed him in a false light in the public eye.

3. The aforementioned false light was objectionable to Plaintiff and to others who were acquainted with Plaintiff, under the circumstances of the way the aforementioned part of the article in suit portrayed him.

4. By allowing the article in suit to be published as written, Defendants acted with reckless disregard of the truth by distorting it and acted with malice.

5. As a result of the aforementioned publication portraying Plaintiff in a false light. Plaintiff has suffered humiliation, loss of reputation of his good name in the community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE Richard L. Arkin, Plaintiff, demands judgment against Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) punitive damages, and costs of this action.

COUNT VII

1. Part of the article in suit states

> "—— and in keeping with his unbiased and charitable nature, Mr. Arkin has busied himself at his typewriter in recent weeks composing one or more reasoned opinions in support of the proposition that the death penalty is not to (sic) much to ask for those who make him cross."

2. Plaintiff never wrote an opinion on the death penalty attributed to him in the part of the article in suit quoted in this Count and Defendants had no information

that he did; by describing Plaintiff as unibased and charitable while having written an opinion in favor of the death penalty (which he did not) under the circumstances described in the portion of the article in suit quoted in this Count, Plaintiff is portrayed ironically as a person with opposing personality characteristics and with a personality disorder.

3. As a result of the aforementioned false, misleading, and derogatory statements about him published with reckless disregard of the truth, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Plaintiff, Richard L. Arkin, demands judgment against the Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and the costs of this action.

COUNT VIII

1. Plaintiff restates, realleges, and incorporates by reference herein paragraph nos. 1 through 3 of Count VII.

2. The publication of the aforementioned article quoted in Count VII made Plaintiff appear to be abnormal psychologically and dishonest, and portrayed him in a false light in the public eye.

3. The aforementioned false light was objectionable to Plaintiff and to others who were acquainted with Plaintiff, under the circumstances of the way the aforementioned part of the article in suit portrayed him.

4. By allowing the article in suit to be published as written, Defendants acted with reckless disregard of the truth by distorting it and acted with malice.

5. As a result of the aforementioned publication portraying Plaintiff in a false light, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Richard L. Arkin, Plaintiff, demands judgment against Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars $(500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and costs of this action.

COUNT IX

1. Part of the article in suit states

> "His first filing was against the Team for Rockville '89. Mr. Arkin took great umbrage at the fact that the slate he was running against failed to endorse his candidacy on their sample ballot."

2. The portion of the article in suit quoted in this Count implies that Plaintiff sought endorsement of the Team for Rockville '89 slate; that implication is false because Plaintiff never sought the endorsement of that slate and Defendants had no information that he did seek the aforementioned endorsement.

3. As a result of the aforementioned false and misleading statement about Plaintiff published with reckless disregard of the truth, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Plaintiff, Richard L. Arkin, demands judgment against the Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount

of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and the costs of this action.

COUNT X

1. Plaintiff restates, realleges, and incorporates by reference herein paragraph nos. 1 through 3 of Count IX.

2. The publication of the aforementioned article quoted in Count IX made Plaintiff appear to be dishonest in his political business dealings by implying that he sought endorsement of the Team for Rockville '89 slate when he did not do so, and portrayed him in a false light in the public eye.

3. The aforementioned false light was objectionable to Plaintiff and to others who were acquainted with Plaintiff, under the circumstances of the way the aforementioned part of the article in suit portrayed him.

4. By allowing the article in suit to be published as written, Defendants acted with reckless disregard of the truth by distorting it and acted with malice.

5. As a result of the aforementioned publication portraying Plaintiff in a false light, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Richard L. Arkin, Plaintiff, demands judgment against Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000) in damages, and in the amount of five million dollars ($5 000,000) in punitive damages, and costs of this action.

COUNT XI

1. Part of the article in suit states

> "On Dec. 1, Mr. Arkin composed an eight-page, single-spaced, typed, footnoted, and meticulously punctuated letter to the Rockville Board of Elections Supervisors recommending that the Alliance of Rockville Citizens be drawn and quartered."

2. The quoted part of the article in suit in this Count is false in that Plaintiff's complaint to the Board requested that ARC be required to forfeit the penalties contemplated by law for failure to file; it did not recommend that ARC be drawn and quartered, and Defendants knew of the aforementioned falsity.

3. As a result of the aforementioned false statement about him published with reckless disregard of the truth, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and suffered emotional distress.

WHEREFORE, Plaintiff, Richard L. Arkin, demands judgment against the Defendants, Gaithersburg Publishing Company, Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000.00) in damages, and in the amount of five million dollars ($5,000,000.00) in punitive damages, and the costs of this action.

COUNT XII

1. Plaintiff restates, realleges, and incorporates by reference herein paragraph nos. 1 through 3 of Count XI.

2. The publication of the aforementioned article quoted in Count XI attributed a false statement of belief to Plaintiff, and portrayed him in a false light in the public eye.

3. The aforementioned false light was objectionable to Plaintiff and to others who were acquainted with Plaintiff, under the circumstances of the way the aforementioned part of the article in suit portrayed him.

4. By allowing the article in suit to be published as written, Defendants acted with reckless disregard of the truth by distorting it and acted with malice.

5. As a result of the aforementioned publication portraying Plaintiff in a false light, Plaintiff has suffered humiliation, loss of reputation of his good name in the Rockville area community, loss of hospitality of those who were once his friends, and has suffered emotional distress.

WHEREFORE, Richard L. Arkin, Plaintiff, demands judgment against Defendants, Gaithersburg Publishing Co., Inc. doing business as The Rockville Gazette and Stephen H. Fisher jointly and severally in the amount of five hundred thousand dollars ($500,000) in damages, and in the amount of five million dollars ($5,000,000) in punitive damages, and costs of this action.

/s/ Michael T. Benson
MICHAEL T. BENSON
2703 Waco Court
Baltimore, Maryland 21209
(301) 484-0358
Attorney for Plaintiff

EXHIBIT 1

I am confidant Arkin's complaints portend little risk to ARC

Steve Fisher

The two-cylinder engine of my IBM flintlock series personal computer had barely ceased roaring in my ears at the conclusion of my last column when I received in hand a missive from the Rockville Board of Elections Supervisors.

Apparently someone by the name of Richard Arkin, using the return address of an unoccupied house in the West End of Rockville, made two attempts to file a formal complaint against the Alliance of Rockville Citizens for having failed his self-designed litmus test for civic responsibility.

Mr. Arkin, a year-long resident of Gaithersburg, is believed to have filed and stood for Rockville City Council last month as a slate of one.

Running mostly under pretense and without the support of a properly constituted election committee. Mr. Arkin nevertheless won the ringing endorsement of his personally organized citizen group of one known as ASS, or Arkin Seems Sensible.

Solemnly resolving that the citizens of Rockville deserved to have a council candidate against which any other candidate for city office could be made to look good, Mr. Arkin made the most of his pledge.

On Nov. 7, the citizens of Rockville reacted favorably to Mr. Arkin's offer of self-sacrifice and delivered him of the lowest individual vote count of all the candidates for Rockville city council.

Buoyed by that crushing defeat, Mr. Arkin has recently offered his services, unsolicited, to the Rockville City

Board of Elections Supervisors as private counsel and chief interpreter of city election law.

To that end, and in keeping with his unbiased and charitable nature, Mr. Arkin has busied himself at his typewriter in recent weeks composing one or more reasoned opinions in support of the proposition that the death penalty is not to much to ask for those who make him cross.

His first filing was against the Team for Rockville '89. Mr. Arkin took great umbrage at the fact that the slate he was running against failed to endorse his candidacy on their sample ballot.

On Dec. 1, Mr. Arkin composed an eight-page, single-spaced, typed, footnoted, and meticulously punctuated letter to the Rockville Board of Elections Supervisors recommending that the Alliance of Rockville Citizens be drawn and quartered. For good measure, Mr. Arkin provided four pages of attachments to his letter.

The City of Rockville received his letter ten days after it was written. Two weeks after having written his first letter, Mr. Arkin sent the Board of Elections a second letter, this one composed of nine pages of single-spaced, typed, footnoted, and meticulously punctuated text upon which he wrote "Amended complaint (replaces complaint dated December 1, 1989)." It was received by the City of Rockville on Dec. 18.

I received copies of both Mr. Arkin's letters on Dec. 21 at a cost of the taxpayers of Rockville of $1.05 in postage and approximately $2.50 in photocopying expenses.

Having read both, I would not hesitate to say that either dissertation would qualify Mr. Arkin for a doctorate in political quackery. Through such authoritative evidence as might be gleaned from a reading of my columns, which Mr. Arkin has previously dismissed as infantile babbling, he presents a case of conjecture in which all

manner of convoluted reasoning and tortured logic are used to form a funeral pyre upon which he believes he has staked ARC, and to which he now asks the Board of Elections to kindly lend their torch.

Though I am confident at this point that Mr. Arkin's scattering of small tinder about a ropeless stake portends little serious risk to ARC or the Team for Rockville '89, I do wonder when the spark of all consuming hatred which imbues Mr. Arkin's soul and which he so carelessly strikes in the presence of his perceived enemies might well find fuel in the flatulence of his own rhetoric.

Perhaps Mr. Arkin has forgotten that it is unwise for childish people to play with matches.

IN THE CIRCUIT COURT
FOR MONTGOMERY COUNTY, MARYLAND

Civil Case No.: ———

RICHARD L. ARKIN, 522 West Deer Park Road,
Gaithersburg, Maryland 20877
Plaintiff

v.

GAITHERSBURG PUBLISHING COMPANY, INC. doing business as The Rockville Gazette, 250 Hungerford Drive, Rockville, Maryland 20850

and

STEPHEN H. FISHER, 1014 Neal Drive,
Rockville, Maryland 20850
Defendants

PRAYER FOR JURY TRIAL

Madame Clerk:

The above Plaintiff elects and prays to have this case tried before a jury.

/s/ Michael T. Benson
MICHAEL T. BENSON
2703 Waco Court
Baltimore, Maryland 21209
(301) 484-0358
Attorney for Plaintiff